

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel,)	
W.A. DREW EDMONDSON, in his)	
capacity as ATTORNEY GENERAL)	
OF THE STATE OF OKLAHOMA,)	
et al.)	
)	
Plaintiffs,)	
)	
V.)	No. 05-CV-329-GKF-SAJ
)	
)	
TYSON FOODS, INC., et al.,)	
)	
Defendants.)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
FEBRUARY 19, 2008
PRELIMINARY INJUNCTION HEARING
VOLUME I

BEFORE THE HONORABLE GREGORY K. FRIZZELL, Judge

APPEARANCES:

<u>For the Plaintiffs:</u>	Mr. Drew Edmondson
	Attorney General
	Mr. Robert Nance
	Mr. Daniel Lennington
	Ms. Kelly Hunter Burch
	Mr. Trevor Hammons
	Assistant Attorneys General
	313 N.E. 21st Street
	Oklahoma City, Oklahoma 73105

(APPEARANCES CONTINUED)

For the Cargill
Defendants:

Mr. Delmar R. Ehrich
Mr. Bruce Jones
Faegre & Benson
90 South 7th Street, Suite 2200
Minneapolis, Minnesota 55402

For the Defendant
Simmons Foods:

Mr. John Elrod
Ms. Vicki Bronson
Conner & Winters
Attorneys at Law
211 East Dickson Street
Fayetteville, Arkansas 72701

For the Defendant
Peterson Farms:

Mr. A. Scott McDaniel
Mr. Philip Hixon
Ms. Nicole Longwell
McDaniel Hixon Longwell & Acord PLLC
320 South Boston, Suite 700
Tulsa, Oklahoma 74103

For the George's
Defendants:

Mr. Woodson Bassett
Mr. James M. Graves
Mr. Paul E. Thompson
The Bassett Law Firm
Post Office Box 3618
Fayetteville, Arkansas 72701

For the Cal-Maine
Defendants:

Mr. Robert F. Sanders
Young Williams P.A.
P. O. Box 23059
Jackson, Mississippi 39225

- - - - -

CONTENTS

Page No.

OPENING STATEMENTS:

By Mr. Edmondson..... 30

By Mr. Ryan..... 42

WITNESSES CALLED ON BEHALF OF PLAINTIFFS:

CANON MILES TOLBERT:

Direct Examination by Mr. Edmondson..... 65

1	(CONTENTS CONTINUED)	Page No.
2	Cross-Examination by Mr. Ryan.....	97
3	Redirect Examination by Mr. Edmondson.....	144
4	Recross-Examination by Mr. Ryan.....	148
5	BARRY ELLIS WINN	
6	Direct Examination by Mr. Bullock.....	160
7	Cross-Examination by Mr. Tucker.....	166
8	CHRISTOPHER M. TEAF	
9	Direct Examination by Mr. Bullock.....	183
10	Cross-Examination by Mr. Tucker.....	226
11	- - - - -	
12	<u>PROCEEDINGS</u>	
13	February 19, 2008	
14	THE COURT: Be seated, please.	
15	THE CLERK: We're here in the matter of the Attorney	
16	General of the State of Oklahoma, et al, vs. Tyson Foods, Inc.,	
17	et al, Case Number 05-CV-329-GKF. Would the parties please	
18	enter their appearance.	
19	MR. BULLOCK: Louis Bullock for the State of Oklahoma.	
20	MS. BURCH: Kelly Burch, State of Oklahoma.	
21	MR. NANCE: Bob Nance for the State of Oklahoma.	
22	MR. BAKER: Fred Baker for the State of Oklahoma.	
23	MR. GARREN: Richard Garren, State of Oklahoma.	
24	MR. PAGE: David Page, State of Oklahoma.	
25	MR. EDMONDSON: Drew Edmondson, State of Oklahoma.	

1 A. Well, as much as we -- this is a problem that is -- has
2 its origins on the other side of the border in Arkansas.
3 Eighty percent of the poultry houses are in Arkansas. There
4 is -- our ability to do something in Oklahoma in state court or
5 under state law or under state regulation is very limited, and
6 we could not solve the problem if we were forced to rely
7 entirely or solely on our state authorities.

8 Q. And in your opinion, how serious is this problem?

9 A. I consider it a very serious problem.

10 Q. Could you tell me, please, why you sued the integrators,
11 the companies, instead of the growers, the farmers?

12 A. Because it is the integrators' waste.

13 Q. And what do you base that on?

14 A. The feed that supplies these birds is brought into the
15 watershed and owned by the integrators. The birds that eat
16 that feed are owned -- brought into the watershed and are owned
17 by the integrators. And when nature takes its course and feed
18 enters bird, what comes out the other side is the result of the
19 integrators' actions.

20 Q. To your knowledge, has that degree of control by the
21 integrators ever been recognized in a court decree?

22 A. It has.

23 Q. I invite your attention to State's Exhibit 41. Could you
24 tell me what that is?

25 A. Yes. This is the decree that resolved the City of Tulsa

1 case. And by -- I should say more formally it's the case that
2 was brought by the City of Tulsa and the TUMA against a number
3 of poultry companies and an Arkansas municipality over water
4 quality problems in the Eucha-Spavinaw watershed, which is
5 Tulsa's water supply.

6 Q. Do you know whether there was ever a moratorium on land
7 application leading up to or subsequent to this order?

8 A. Subsequent to this order. What the order did was require
9 that land application in that watershed not occur until there
10 were new plans written based on a newly adopted phosphorus
11 index. And so from the summer of 2003 when that was
12 implemented, well into and through much of the next year, there
13 was a moratorium on land application in that watershed.

14 Q. To your knowledge, were any growers or farmers in that
15 case?

16 A. I don't believe that there was a single grower or a single
17 farmer in that case.

18 Q. So the named defendants were the companies?

19 A. The only -- the named defendants were the companies. The
20 order bound them and the result was a moratorium, an effective
21 moratorium, and then an effective change in how it is that
22 litter was managed in that watershed.

23 Q. And in your opinion, will the risks associated with these
24 bacterial levels be substantially reduced if the injunction is
25 granted?